



# San Joaquin Valley Water Reliability Act

## Legislative Summary

Since the construction of the federal Central Valley Project, California's water needs have grown dramatically while supplies have stayed virtually steady. In the past few years, we saw massive economic damage inflicted by the capricious curtailment of water deliveries to San Joaquin Valley communities.

Such curtailments cost thousands of farm workers their jobs, inflicted up to 40 percent unemployment in some towns, and fallowed hundreds of thousands of acres of fertile farmland. Even now, when California has experienced near record precipitation and reservoirs are in flood operation, some farmers are only receiving 80% of their contracted water supplies. This year, Mother Nature has helped mitigate the current circumstance. But a far worse man-made drought, similar to 2009 where water allocations barely reached 10%, could return because draconian regulations are in place to once again divert water from farms to three inch fish – the Delta smelt.

The San Joaquin Valley Water Reliability Act promotes water policies that facilitate the delivery of the California's abundant supply of water, as well as support the implementation of an economically feasible and environmentally sustainable river restoration on the San Joaquin River. This document provides a summary of key provisions in the San Joaquin Valley Water Reliability Act.

### ***Central Valley Project Improvement Act Reforms***

The San Joaquin Valley Water Reliability Act (Act) includes a number of provisions that will update the Central Valley Project Improvement Act (CVPIA) to ensure that it fulfills original promises while focusing on native species.

The Act focuses the entire weight of CVPIA on native species to ensure that they receive the full benefit of environmental restoration work. Specifically, it removes both American shad and striped bass, which are both non-native species, from the definition of 'anadromous fish'. This will ensure that the focus of the CVPIA remains on the native species of salmon (including steelhead) and sturgeon.

The Act provides incentives for water districts to expand conjunctive use of surface and groundwater to ensure they have an ability to survive during dry years. To do this, the Act repeals the CVPIA tiered pricing scheme - originally intended to encourage water conservation. In reality, tiered pricing has become a punitive tax on water districts who try to expand conjunctive use. Repealing tiered pricing will expand groundwater banking which will have both water supply and environmental benefits.





The Act corrects provisions in CVPIA that, even the drafters admit, unduly limit water transfers between contractors within the CVP. In limiting transfers, it removed the flexibility in the CVP to adapt to various water needs during drought and wet years. First, to speed-up transfers, the Act gives the contracting district or the Secretary 45 days to make a determination if a written transfer proposal is complete. Second, the Act prevents the Secretary from mandating mitigation on the proposed transfer. And third, it exempts historic transfers which occurred before enactment of CVPIA from conditions imposed in CVPIA.

The Act reaffirms the original CVPIA commitment that a maximum of 800,000 acre-feet of water will be dedicated to fish, wildlife, and habitat restoration purposes. It is generally accepted that, on average, the provisions in CVPIA dedicate 1.2 million acre-feet annually to environmental purposes. The Act ensures that 800,000 acre-feet is a cap and that the water can be reused for contractual obligations. The Act further provides a safety net for Delta Division contractors in low water years by requiring a 25% reduction in the 800,000 acre-feet if Delta Division water allocations are below 75% by March 15<sup>th</sup>. Despite a clear direction in CVPIA to mitigate or replace the 800,000 acre-feet, the water has never been replaced or the yield of the CVP increased. The Act reaffirms it was Congress' intent that the CVP yield be increased by requiring the Secretary to implement a plan to increase CVP yield to replace the lost water. If the Secretary fails to do so the 800,000 acre-feet shall be delivered to water users.

The Act restores accountability to the CVPIA Restoration Fund. Since its creation in 1992, the fund has collected and distributed nearly \$800 million for programs and projects intended for habitat restoration and mitigation. However, many question the process that is used to make funding decisions and have further questioned the quantitative and qualitative results of the programs and projects undertaken with money from the fund. The Act ensures that funding decisions are transparent by creating a Restoration Fund Advisory Board consisting of 12 members selected by the Secretary representing various stakeholders. The Advisory Board will be tasked with providing the Secretary advice on expenditures from the Restoration Fund and will report to Congress on the progress being made to achieve the goals identified in CVPIA. The Act also secures local support by requiring that 50% of the Restoration Funds paid are expended on programs or projects within the area that made the payments. The Act further encourages conjunctive use and environmental mitigation through groundwater recharge by waiving the Restoration Fund fee on any water that is delivered with the sole intent of groundwater recharge. The Act also expands the use of the Restoration Fund to include projects that will increase the Central Valley Project yield as called for in CVPIA.

The Act restores consistency in water contracts by directing the Secretary to provide successive 40 year renewal of existing long-term contracts which promotes the certainty required for long-term investment. The right of successive renewal is a critical component in long-term financing and planning for agricultural and urban water contractors. The Act also continues the mandate established by the CVPIA that requires the Secretary to only charge for water that is delivered.

The Act resolves long standing concerns about the use of the Central Valley Project to store and convey non-project water. The Act specifically authorizes the Secretary to enter into





contracts, including long-term contracts, with any agency or private organization to exchange, impound, store, carry, and deliver non-project water through the Central Valley Project and charge appropriate rates to do so, thus promoting efficient water management.

### ***Bay-Delta Improvements***

The Act revives the landmark Bay-Delta Accord which was universally praised and signed by California Governor Pete Wilson, Interior Secretary Bruce Babbitt, Commerce Secretary Ron Brown, EPA Director Carol Browner, various local water agencies, and key environmental interest groups. The Act confirms that if the State Water Project and the Central Valley Project are operated in a manner consistent with the Bay-Delta Accord, they have complied with all the requirements of the Endangered Species Act. The Act directs the Secretary of the Interior and the Secretary of Commerce to draft biological opinions in a manner consistent with the Bay-Delta Accord.

The Act prioritizes native species over non-native species in the Delta and the Sacramento and San Joaquin Rivers (and tributaries). Scientists have identified that predatory non-native species are one of the primary stressors on salmon smolts and Delta smelt. With the goal of protecting native species, the Act removes “take” limits on non-native species that are preying on native species.

### ***San Joaquin River Settlement – Repeal and Replace***

The Act stops the billion dollar salmon restoration program on the San Joaquin River – better known as the San Joaquin River Settlement. The Act repeals the San Joaquin River Restoration Settlement Act and directs the Secretary to stop implementation of the court approved settlement. The Act replaces the salmon restoration program with a more environmentally sustainable and economically feasible habitat restoration program that provides substantial regional benefits. The Act re-wets the San Joaquin River from Friant Dam to Mendota Pool requiring a minimum of 50 cubic feet per second (except in Critical Water Years) thereby restoring a live fishery. The Act declares that if the flow regime is implemented, then it satisfies any obligation under Section 5937 of the California Fish and Game Code.

The Act mitigates for the lost water in the new habitat restoration program by authorizing the recovery of the Restoration Flows down stream. The Act also authorizes the development and implementation of a groundwater impact plan to further mitigate for the surface water losses.

The Act creates a San Joaquin River Fishery Restoration Fund that will be used to finance the habitat restoration program. The Act authorizes the deposit of funds derived from the “Friant Surcharge” and any funds remaining in the San Joaquin River Restoration Fund upon date of enactment.

### ***Other Authorities***

The Act settles a long debated issue – the counting of hatchery fish toward compliance with the Endangered Species Act. The Act directs the Secretary to not distinguish between





natural-spawned and hatchery-spawned species when making any determination under the Endangered Species Act in relation to species present in the Sacramento and San Joaquin Rivers and their tributaries.

The Act incentivizes Central Valley Project water users to pay-off the remaining balance of the federal loan provided to construct the project. The Act authorizes the Secretary, upon request of the water user, to convert existing “water service contracts” to more favorable “repayment contracts”. Upon conversion, the “full cost pricing” and “acreage limitation” stipulated by Reclamation law will no longer apply. To qualify for conversion, a contractor must pay, either through lump sum or accelerated prepayment, their remaining balance of capital construction costs.

